

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Brian G. Lau, Commission Counsel
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion of Proposed Regulation 18402.1 and Amendment of Regulation 18427 - Principal Officer: Definition and Reporting Requirements

Date: July 28, 2008

Proposed Commission Action and Staff Recommendation: Approve publication of notice for adoption of proposed Regulation 18402.1 and amendment of Regulation 18427 in October.

Reason for Proposal: Under the Political Reform Act, a committee receiving contributions totaling \$1,000 or more in a calendar year, thus qualifying as a recipient committee, is required to file a statement of organization within 10 days after it has qualified as a recipient committee. (Section 84101; also see Section 82013(a).) Additionally, a committee, including an independent expenditure committee, qualifying as a recipient committee prior to an election but after the last campaign statement required to be filed before the election, must file a statement providing the information required in a statement of organization within 24 hours. (Section 84101(b) and (c); also see Sections 82036.5 and 82013(a).)

Section 84102 outlines the requirements for a statement of organization or a 24-hour statement required by Section 84101(b) or (c). In pertinent part, Section 84102(c) requires “the full name, street address, and telephone number, if any, of the treasurer and principal officers” of the committee. Despite the requirements of Section 84102(c), most committees do not provide information regarding the principal officers of the committee when submitting a statement of organization or a 24-hour statement required by Section 84101(b) or (c). Contributing to the problem, the Act and current regulations do not define the term “principal officer” and do not clearly specify when a principal officer must be identified.

Typically, except for candidate controlled committees, the only individual identified on a statement of organization or a 24-hour statement required by Section 84101(b) or (c) is the treasurer of the committee.¹ While the Act imposes certain duties upon a committee treasurer,

¹ Candidate controlled committees must also disclose the name of the controlling candidate. (Section 84102(e).) Because the controlling candidate is generally the individual with the ultimate responsibility for approving the activities of his or her controlled committee, it is not necessary to require the disclosure of other principal officers to identify the individual responsible for the activities of a candidate controlled committee.

the treasurer is not necessarily the individual with the ultimate responsibility to approve the committee's political activities.² Consequently, the individual with the ultimate responsibility to approve a committee's political activities is not publicly identified and can control the committee behind the veil of the committee's treasurer. Accordingly, by defining the term "principal officer" and clarifying when the officer must be disclosed, the Commission can implement the Act's intent to shed light on the individual or individuals ultimately responsible for approving the committee's political activities.

Summary of Proposed Actions: Staff is recommending language requiring a committee, other than a candidate controlled committee, to disclose the name of its principal officer when submitting a statement or organization as required by Section 84101(a) or a 24-hour statement required by Section 84101(b) or (c). The proposed language defines the term "principal officer" as "the individual primarily responsible for approving the political activity of the committee including, but not limited to, (1) authorizing the content of the communications made by the committee, (2) authorizing contributions or expenditures on behalf of the committee, or (3) determining the committee's campaign strategy." Where the primary responsibility for approving the political activity of a committee is shared by more than one individual, such as a board or similar body, staff recommends language requiring disclosure of the name of each individual or member of the board or body.

For purposes of proposed Regulation Section 18402.1, staff is also recommending both of the following:

- Language requiring that the committee treasurer is identified as both the treasurer and the principal officer if no individual other than the treasurer has the primary responsibility for approving the political activity of the committee.
- Language clarifying that an amendment to a statement or organization shall be filed within 10 days, as currently required by Section 84103, of any change in the principal officer or officers identified in a statement.

Staff is also recommending a related amendment to Regulation 18427, which specifies the duties of treasurers and candidates with respect to campaign statements. Currently, subdivision (d) states that the person who is primarily responsible for initiating and implementing the political activity of a committee will be considered the treasurer and subject to the duties of the treasurer if the committee fails to designate a treasurer as required by Section 84100. Staff recommends that the individual who should be considered the treasurer of the committee, if the committee fails to designate a treasurer, should be the same individual qualifying as the principal officer of the committee under Proposed Regulation 18402.1.

² Every committee must have a treasurer and no expenditure can be made by or on behalf of a committee without the authorization of the treasurer or his or her designated agent. (Section 84100.) Furthermore, the treasurer must verify committee campaign statements and must use all reasonable diligence in the preparation of the statements. (Regulation 18427.)

However, the phrase “person who is primarily responsible for initiating and implementing the political activity of the committee” in Regulation 18427(d) could be interpreted to include more than just the individual or individuals with the ultimate authority over a committee’s political activities. Accordingly, staff recommends revisions to Regulation 18427(d) replacing the term “person” with the phrase “individual or group of individuals” and replacing the phrase “initiating and implementing” with the term “approving.” These revisions conform Regulation 18427(d) to proposed Regulation 18402.1, while serving the purposes of Regulation 18427(d) by specifying that the individual or individuals ultimately responsible for a committee’s political activity will be considered the treasurer or treasurers if the committee fails to designate a treasurer.

Additionally, the proposed amendments to Regulation 18427 include other technical and non-substantive revisions.

Attachments:

- 1 – Proposed Regulation 18402.1**
- 2 – Proposed Amendment to Regulation 18427**
- 3 – Government Code Section 84102**